

LEGAL SERVICES AGREEMENT

THIS LEGAL SERVICES AGREEMENT (“Agreement”) is entered into this 7th day of September, 2021, by and between the City of Port Hueneme (the “City”) and Green de Bortnowsky, LLP (the “Firm”).

RECITALS

The following recitals are a substantive part of this Agreement:

1. The City is in need of City Attorney legal services.
2. The Firm has represented the City since May of 2017. The Firm’s Agreement was renewed in July of 2019 for a two-year term, and the parties desire to continue that relationship under the terms of this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Term of Agreement.

1.1 Subject to the early termination provisions set forth in this Agreement below, the term of this Agreement shall be for two (2) years commencing on the date set forth in the initial paragraph of this Agreement, which shall thereafter automatically renew annually for one year terms on the same terms and conditions (with the exception of a different fee structure as may be approved by the City) unless the Parties give written notice to the other party thirty (30) days prior to the expiration of the then current term of its desire to terminate this Agreement, or of its desire to negotiate a change in the terms and conditions.

1.2 The City desires to fix the fee structure set forth in Exhibit “A” for a period of two (2) years. In consideration thereof, the City agrees for the initial one (1) year portion of the term, this Agreement may be cancelled by the City as provided in Section 13 below (“Early Termination”), with the provision that if termination occurs any time within the first year of the term the Firm will be entitled to a payment (the “Termination Payment”), in addition to all sums otherwise due under the Agreement for services rendered or costs expended up to the effective date of Early Termination, equal to four times the Average Monthly Fee (as defined in the following paragraph), and if termination occurs any time within the second year of the term the Firm will be entitled to a Termination Payment equal to three times the Average Monthly Fee.

1.3 “Average Monthly Fee” is defined as the total of all fees and expenses invoiced to the City during the term of this Agreement up to and including the date of the notice of cancellation, divided by the number of months which have elapsed since the inception of the term. By way of example, if notice of termination is given at the commencement of the tenth (10th) month of the term, and the total of the fees invoiced during the first nine (9) months is equal to

\$90,000, the Average Monthly Fee is \$10,000. Thus, termination of the Agreement at that time would call for a Termination Payment of $4 \times \$10,000 = \$40,000$. If the notice of termination is given on a date other than the commencement of a month of the term, the partial month and the amount invoiced therein will be disregarded for purposes of calculating the Average Monthly Fee.

2. Services to be Provided.

2.1 *General Services.* The Firm shall designate Kevin Spaulding to serve as City Attorney for the City and general counsel for the City's affiliated entities under this Agreement (unless otherwise directed by the City) and provide the City the General Services as described in Exhibit "B", attached hereto.

2.2 *Litigation Services.* Litigation Services shall only include services as directed by the City Council, and may include mediations, arbitrations, code enforcement proceedings, court actions, appeals and related matters.

3. Legal Costs.

3.1 *Compensation.* The Firm shall be compensated as described in Exhibit "A", attached hereto.

3.2 *Expense Reimbursement.* The Firm shall be reimbursed for expenses as described in Exhibit "A", attached hereto. The Firm shall keep accurate records of all costs and expenses. These records shall be made available to the City upon reasonable request.

The City will further reimburse actual, reasonable and necessary out of pocket expenses incurred by the Firm in performing any services under this Agreement, including but not limited to the following:

- a. Statutory fees, witness fees, reporters fees, stenographic transcription, jury fees, court filing fees and the cost of serving process actually incurred by the Firm.
- b. Mailing charges.
- c. Electronic research service charges.

3.3 *Expert Consultations and Witnesses.* Expert consultations and witnesses, and any investigators, may be retained on terms acceptable to the City, authorized and approved in advance, for which the City shall reimburse the Firm or pay investigators, consultants or experts directly. In no event shall the Firm retain any service of any expert, investigator or consultant without first receiving express authorization and approval from the City.

3.4 *Billing.* The Firm agrees to provide detailed invoicing of all billing for services on a monthly basis. All charges will be itemized by the Firm, showing in detail the work task performed during the billing entry. For Litigation Services, the invoice shall include the

amount, billing rate and basis for calculation of all fees and costs. All billing for work performed under this Agreement shall be sent to the following:

City of Port Hueneme
Attn: Brad "Brick" Conners
250 North Ventura Road
Port Hueneme, California 93041

3.5 In the event of a question or dispute regarding a billing matter, and in recognition of hourly rate concessions, it is agreed that the invoice will be paid in a timely manner, with the exception of the questioned item or items. The parties to this Agreement will work in good faith to resolve the outstanding issues and either payment will be made accordingly, the billing will be withdrawn, or reimbursement will occur, as appropriate.

4. Insurance.

4.1 *Professional Errors and Omissions Insurance.* The Firm shall obtain and maintain in full force and effect at all times Professional Errors and Omissions Liability Insurance. Such insurance shall provide coverage in an amount not less than two million dollars (\$2,000,000) per occurrence. The Firm shall also obtain and maintain in full force and effect at all times Automotive and General Liability Insurance in an amount not less than one million dollars (\$1,000,000) per occurrence. The insurance policies required under this paragraph shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage, or in limits, except after thirty (30) days prior written notice, by certified mail return receipt requested, given to the City.

a. Said insurance policies shall provide coverage to the City and its affiliated entities for any damages or losses suffered by the City and/or its affiliated entities as a result of any error or omission, or neglect by the Firm which arise out of the services rendered under this Agreement.

b. The Firm shall, within ten (10) days after entering into this Agreement, deposit with the City a certificate of insurance certifying that all insurance required herein is, and will be, in full force and effect from the time the Agreement is entered into until completion or termination of this Agreement. The Certificates of Insurance must be renewed at least fifteen (15) days prior to expiration.

c. All insurance required shall be carried only by responsible insurance companies authorized to do business in California and shall name as additional insured the City and its affiliated entities, their officials, officers, employees, agents and representatives. All policies shall contain language to the effect that: (1) the insurer waives any right of subrogation against the City and the City's officials, officers, employees, agents, and representatives; (2) insurance shall be primary non-contributing and any other insurance carried by the City shall be excess over such insurance; and, (3) such insurance shall not be cancelled or materially changed except after thirty (30) days notice by the insurer to the City by certified mail. The Firm shall furnish the City with copies of all applicable policies promptly upon receipt.

d. Nothing in this section shall be construed to make the Firm other than an independent contractor/consultant for all purposes.

e. The Firm agrees to notify the City in the event that the limits fall below the coverage stated above or if the insurance policies noted here are allowed to lapse and substitute insurance is, or is not, obtained.

4.2 *Workers Compensation Insurance.* The Firm shall obtain and maintain workers compensation insurance in accordance with Section 3700 of the California Labor Code in an amount not less than one million dollars (\$1,000,000) per occurrence.

5. Indemnification.

The Firm agrees to protect, hold harmless, defend, and indemnify the City, its employees, elective or appointive boards, officers, agents, agenda and affiliates, from any and all loss, claims, liabilities, expenses, or damages of any nature whatsoever, including attorneys fees, arising out of or in any way connected with the performance of, or services rendered by, the Firm, the Firm's agents, officers, employees, sub-contractors or independent contractors of the Firm, except where the loss or liability is due to the negligence or willful misconduct of the City.

6. City Agent.

The City Council is the City's agent for purposes of this Agreement. Whenever authorization or approval is required, the Firm understands that the City Council has the authority to provide the authorization or approval, except where the City Council has expressly delegated authority to the City Manager.

7. Independent Contractor.

The Firm, and anyone employed by the Firm, are not and shall not be, deemed employees of the City. The Firm is solely responsible for the payment of employment taxes, workers compensation taxes, and any other taxes for employees.

8. Conflict of Interest.

8.1 The Firm represents that it presently has no material financial interest other than that which may be held by the general public and shall not acquire any interest, direct or indirect, in any contract or decision made on behalf of the City which may be affected by the services to be performed by the Firm under this Agreement. The Firm further agrees that no person having any such interest shall be employed by it. If the Firm, or their employees, acquires a direct or indirect personal interest, such interest shall be immediately disclosed to the City and the interested individual shall abstain from any contracts or decisions under this Agreement.

8.2 In addition to the proscriptions regarding conflicts of interest imposed on the Firm by the Business and Professions Code and by California Rules of Professional Conduct, the Firm represents that no attorney of the Firm shall represent clients before any board, commission, committee or agency of the City or represent any client with interests adverse to the City, unless a bona fide conflict of interest waiver is executed by both the City and other applicable parties. Furthermore, the Firm shall at all times avoid conflicts of interest or the appearance of a conflict of interest in performance of this Agreement. The Firm shall immediately notify the City Manager of any circumstances, or change of circumstances, that may provide for the potential for a conflict of interest, or actual conflict of interest.

9. Non-Liability of Officials/Employees of the City.

No official or employee of the City shall be personally liable for any default or liability under this Agreement.

10. Compliance with Law.

The Firm shall comply with all applicable laws, ordinances, codes and regulations of the Federal, State and local governments. In addition, the Firm agrees to abide by all ethical and moral standards as represented by the Rules of Professional Conduct as applied to the California State Bar.

11. Work Product.

All documents, or other information developed or received by the Firm, other than the Firm's internal work product, shall be the property of the City. The Firm shall provide the City with copies of items upon reasonable demand or upon termination of this Agreement.

12. Notices.

All notices shall be personally delivered or mailed, via first class mail, to the below listed address. In addition, such addresses shall be used for delivery for service of process. The Firm agrees to notify the City within ten (10) days of the date of any change of address and agree to keep an updated address with the applicable Courts on any matters that the Firm is representing the City.

a. Address of the Firm is as follows:

Green de Bortnowsky, LLP
ATTN: Kevin Spaulding
30077 Agoura Road, Suite 210
Agoura Hills, CA 91301
Telephone: (818) 704-0195
Facsimile: (818) 704-4729
Electronic Mail: kspaulding@gdblawoffices.com

b. Address of the City is as follows:

Brad Conners, City Manager
City of Port Hueneme
250 North Ventura Road
Port Hueneme, California 93041

13. Early Termination of Agreement.

Subject to Section 1 above, and to the extent not otherwise extended for a one year term as contemplated thereby, the City shall have the right to terminate this Agreement upon thirty (30) days' notice, with or without cause, at any time pursuant to the Ralph M. Brown Act. The Firm shall have the right to terminate this Agreement with thirty (30) days' prior notice to the City. The Firm, however, shall not substitute out as the Firm of record on any matters in which they may be representing the City without first obtaining written consent from the City, or first obtaining an appropriate court order, allowing the Firm to withdraw as counsel of record. The Firm will be entitled to receive payment for any services rendered or costs expended up to the date of the termination of the term of this Agreement.

14. Limitations Upon Assignment/Subcontracting.

The Firm agrees that no portion of their performance or services rendered under this Agreement shall be assigned by the Firm or subcontracted to any other firm or individual without prior written authorization and approval of the City. No assignment by the City of any services outlined in Exhibit "B" shall occur.

15. Non-Discrimination.

The Firm represents that it is an equal opportunity employer and shall not discriminate against any person because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation.

16. Time of Essence.

Time is of the essence in the performance of this Agreement.

17. Execution.

The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement as herein stated, and that, on the part of the City, this Agreement has been approved by a majority vote of the City Council. This Agreement may be executed in counterparts.

18. Entire Agreement.

This Agreement represents the Parties' final and mutual understanding. This Agreement supersedes any previous agreements.

19. Modification.

This Agreement shall not be modified or replaced except by another signed, written Agreement, properly executed by the Parties.

20. Waiver.

The waiver of any breach or any provision of this Agreement does not waive any other breach of that term, or any other term, in this Agreement.

21. Partial Invalidity.

If any part of this Agreement is found for any reason to be unenforceable, all other parts nonetheless shall remain in force.

22. Governing Law.

This Agreement shall be interpreted and construed in accordance with the laws of the State of California. Any action commenced regarding this Agreement shall be filed in the Ventura County Superior Court.

23. Interpretation.

This Agreement shall be interpreted as though prepared by both Parties.

24. Survival.

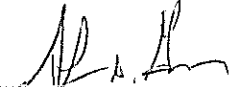
All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the City and the Firm shall survive the termination of this Agreement.

[THIS PORTION LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, these parties have executed this Agreement on the day and year shown hereinabove.


Date: September 7, 2021

CITY OF PORT HUENEME

By: 
Steven A. Gama, Mayor

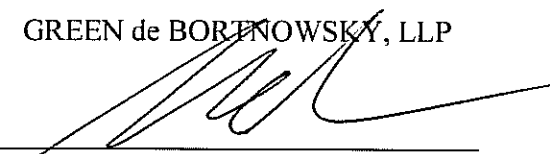
Date: September 7, 2021

ATTEST:

By: 
Kristy Buckemper, City Clerk

Date: September 9, 2021

GREEN de BORTNOWSKY, LLP

By: 
Andre de Bortnowsky, Managing Partner

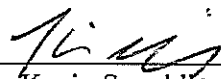
By: 
Kevin Spaulding, Associate Attorney

Exhibit A

GREEN de BORTNOWSKY, LLP

The Firm is aware of the financial challenges currently facing the City, and is proposing hourly rates considerably below those it currently charges to existing clients. Regardless, the Firm wishes to make it clear that it is open to negotiation as to the manner and method of calculating legal costs.

COST SUMMARY

A. COMPENSATION AND BILLING PRACTICES

For the term of the Agreement, the Firm will provide services for a flat hourly fee of \$175.00 for all attorneys, and \$115.00 for paralegals.

The Firm will bill the City at these rates for all services, other than litigation, including basic general and special services, other than travel to and from the City (which shall not be billed to the City). Litigation matters will be handled at a flat hourly rate of \$220.00 for all attorneys and \$115.00 for paralegals. Time is billed in minimum increments of one-tenth of an hour for each separate task performed.

B. EXPENSE REIMBURSEMENTS

The expense reimbursement policy of the Firm is as follows:

Mileage: Charged at the rate then in effect for permitted reimbursement by the Internal Revenue Service.

Document reproduction: 28 cents (\$0.28) per page

Faxes (Incoming and Outgoing): \$1.00 per page (incoming and outgoing)

1. Charges from third parties relating to the City's business will be passed through to the City at the actual charge and without any premium.
2. The expense reimbursement schedule is subject to the same annual review process as applies to the Firm's hourly rate structure (except as to the initial two (2) year term).
3. The Firm will not charge for local travel-related expenses (i.e. billable attorney time or mileage), such as travel between the Firm's offices and City Hall, or within the City.

Exhibit B

GENERAL SERVICES

The Firm will perform services for the City and its affiliated entities on an as-needed basis. General Services shall include, without limitation, the following duties and responsibilities:

1. Review and/or prepare staff reports, ordinances, resolutions, orders, Agreements, forms, notices, declarations, certificates, deeds, leases, and other documents required by the City;
2. Consult with the City Council and City staff as needed – rendering legal advice and opinions (both oral and written) concerning legal matters that affect the City including new legislation and court decisions;
3. Research and interpret laws, court decisions and other legal authorities in order to prepare legal opinions and to advise Council and management staff on legal matters pertaining to City operations;
4. Provide legal services pertaining to property acquisition, property disposal, public improvements, public rights of way and easements, and matters relating to public utilities;
5. Coordinate the work of outside legal counsel as needed and as directed by the City Council;
6. Provide clear and concise legal advice and consultation on a daily basis as requested and required to members of the City Council, City Manager and staff;
7. Attend City Council meetings and be prepared to advise the City Council on matters on the agenda as well as procedural or substantive issues that arise during the meeting. Attendance at other Council subcommittee meetings may be requested from time to time;
8. Provide guidance concerning the requirements of the Brown Act, Conflict of Interest, AB1234 compliance and Political Reform Act, the Public Records Act, due process and other legal requirements imposed by statute and common law;
9. Prepare, review and revise staff documents, including, but not limited to, initiation of memorandums concerning legal issues, contracts, agreements, ordinances, resolutions, land use decisions on appeal, and staff reports as determined by the City Manager;
10. Represent the City in inter-agency projects and other legal matters;
11. Provide legal counsel services for code enforcement prosecution; work closely with city staff to compel property owners to comply with the City's Municipal Code, City ordinances, State laws and Health and Safety regulations as they relate to individual properties;
12. Provide legal counsel on a variety of City disciplines, including housing, zoning, building, litter, sign, fire and health and safety ordinances;

13. Provide legal counsel on various types of violations prosecuted including public nuisances, substandard housing, abandoned and structurally unsafe buildings, illegal dumping or storage, illegal businesses, fire hazards, destruction of environmentally sensitive land, un-permitted uses in residential zones, and water theft;
14. Provide legal counsel that will assist enforcement and participation toward the development and appropriate long term strategy to abate nuisance activity;
15. Review contracts, bid specifications, and purchasing documents for the purposes of legal and policy compliance, appropriate risk transfer and risk analysis and avoidance;
16. Provide legal services regarding personnel matters, labor relations matters, including arbitrations, mediations, fact findings, labor negotiations, and personnel investigations, fact-finding hearings, and similar proceedings;
17. Provide legal services regarding whether to file claims or commence litigation;
18. Provide legal services regarding matters of environmental compliance as they pertain to actions by the City;
19. Provide legal services regarding matters of property rights and property management;
20. Provide legal services to the Successor Agency
21. Provide legal services related to processing land use entitlements, general plan, specific plan and zoning amendments, land use entitlement processing, and compliance with state and federal environmental laws.